111.

SUPREME COURT OF THE UNITED STATES.

No. 47.

LESSEE OF AMBROSE WALDEN, PLFF. IN ER.

VERSUS

JOHN CRAIG'S HEIRS, JONA. ROSE & AL.

ERROR TO THE CIRCUIT COURT U. S. FOR KENTUCKY.

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Langtree & O'Sullivan, Print.

Pleas before the Honorable John Catron and Thomas B. Monroe, Judges of the eighth Circuit Court of the United States of America, in and for the Kentucky district, at the November term of said court, holden in Frankfort, in the year 1837.

Caption.

Be it remembered, that heretofore, to wit, on the 27th day of March, 1837, came the plaintff by his attorney, into the clerk's office of the court aforesaid, and sued out the following scire facias, to wit:

[SEAL.] The United States of America, to the Marshal of the Kentucky district, greeting:

Scire Facias.

Whereas, John Den, on the demise of Ambrose Walden, at a district court of the United States of America, in and for the Kentucky district, on the 19th day of June, 1800, before the judge of the said court, by the judgment of that court, had recovered of Lewis Craig and Jonathan Rose, his term of, and in the premises (marked in the plat E. F. G. C.) with the appurtenances yet to come, and unexpired, being four dwelling-houses, twenty out-house, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood-land, situate on the waters of Johnson's fork of Licking, in Mason county, whereof the said Lewis Craig and Jonathan Rose, are convict as appears to us of record, which said term is yet unexpired.

And whereas, since the rendering of the said judgment, the said Lewis Craig has departed this life, leaving the following persons as heirs, to wit: John Bing, and Catharine Bing, his wife, John Craig, William Craig, Francis Barker, Thomas Trueman, and Sarah Trueman, his wife, David Childs, John Chiles, Ann Soward, Maria Soward, Elizabeth Soward, Lewis Craig, Elizabeth Kempt, Oliver Craig, Francis Craig, Maccoy Craig, Jane Craig, Melvina Craig, John H. Craig, Polly Craig, Francis Thomas, and Elizabeth Thomas.

And now, on behalf of the said John Den, on demise of Ambrose Walden, we are informed, that altho' judgment in form aforesaid be given, yet execution thereof still remains to be made.

Therefore, we command you, that you make known to the said John Bing, and Catharine Bing, his wife, John Craig, William Craig, Francis Barker, Thomas Tureman, and Sarah Tureman his wife, David Childs, John Chiles, Ann Soward, Maria Soward, Elizabeth Soward, Lewis Craig, Elizabeth Kempt, Oliver Craig, Francis Craig, Maccoy Craig, Jane Craig, Melvina Craig, John H. Craig,

Polly Craig, Francis Thomas, and Elizabeth Thomas, heirs of said Lewis Craig, dec'd., Jonathan Rose and John N. Proctor, the tenant in possession of the premises aforesaid, to appear before the judges of the 8th circuit court of the United States of America, in and for the Kentucky district, on the first Monday in May next, to shew cause, if any thing they can, why the said John Den, on the demise of Ambrose Walden, execution of the judgment aforesaid (ought not to have, according to the form and effect of the recovery aforesaid) if to him it seems expedient, and further to do and receive what our said court shall in this part consider, and have then there this writ:

In witness whereof, Roger B. Taney, Chief Justice of the Supreme Court of the United States, hath caused the seal of our said court to be hereunto affixed, this 27th day of March, A. D. 1837, and in the 61st year of our independence.

Attest: JNO. H. HANNA,
C. C. C. K. D.

Return of Marshal.

Marshal's return, to wit: "Executed on 20 April, 1837, on John Craig, John H. Craig, Oliver, Francis Jane, and Malvina Craig, Polly McCoy, late Polly Craig, Francis Barker, David and John Childs, Elizabeth Soward. On 21 April, executed on Catharine King. On 22 April, executed on Lewis Craig. On 24 April, executed on John N. Proctor. The following defendants are not found. Ann and Maria Soward, and Elizabeth Kempt. Also, the following who are no inhabitants, Thomas Tureman, and Sarah, his wife, (Missouri,) Francis and Elizabeth Thomas, (Baton Rouge,) Jonathan Rose, John King is dead. McCoy Craig, not found, there being no such person known to me.

ANDREW J. McCALLA,
D. M. K. D.

Do.

Executed on Willian Craig, in Woodford county, on 27 April 1837.

JNO. M. McCALLA,
M. K. D.

And on the 24th day of May, 1837, the following alias scire facis was issued, to wit:

[SEAL.] The United States of America, to the Marshal of the Kentucky district, greeting:

Alias Scire Facias.

Whereas, John Den, on the demise of Ambrose Walden, at a dis-

trict court of the United States of America, in and for the Kentucky district, on the 19th day of June, 1800, before the judge of the said court, by the judgment of that court, had recovered of Lewis Craig and Jonathan Rose, his term of, and in the premises, (marked on the plat E. F. G. C.) with the appurtenances, yet to come and unexpired, being four dwelling-houses, twenty out-houses, *fifty* acres of meadow, one hundred acres of arable land, and three hundred acres of wood land; situate on the waters of Johnson's fork of Licking, in Mason county, whereof the said Lewis Craig and Jonathan Rose, are convict as appears to us of record, which said term is yet unexpired. And whereas, since the rendering of the said judgment, the said Lewis Rose has departed this life, leaving the following persons as heirs, to wit: John Bing, and Catharine Bing, his wife, John Craig, William Craig, Francis Barker, Thomas Tureman, and Sarah Tureman, his wife, David Chiles, John Chiles, Ann Soward, Maria Soward, Elizabeth Soward, Lewis Craig, Elizabeth Kempt, Oliver Craig, Francis Craig, John Maccoy, Jane Craig, Melvina Craig, John H. Craig, Polly Craig, Francis Thomas, and Elizabeth Thomas.

And now, on behalf of the said John Den, on demise of Ambrose Walden, we are informed that altho' judgment in form aforesaid be given, yet execution thereof still remains to be made.

Therefore, we again command you that you make known to the said John Bing, and Catharine Bing, his wife, John Craig, William Craig, Francis Barker, Thomas Tureman, and Sarah Tureman, his wife, David Childs, John Chiles, Ann Soward, Maria Soward, Elizabeth Soward, Lewis Craig, Elizabeth Kempt, Oliver Craig, Francis Craig, John Maccoy, Jane Craig, Melvina Craig, John H. Craig, Polly Craig, Francis Thomas, and Elizabeth Thomas, heirs of said Lewis Craig, dec'd. Jonathan Rose and John N. Proctor, the tenant in possession of the premises aforesaid, to appear before the judges of the eighth circuit court of the United States of America, in and for the Kentucky district, on the first Monday in November next, to shew cause, if any thing they can, why the said John Den, on the demise of Ambrose Walden, execution of the judgment aforesaid ought not to have, according to the form and effect of the recovery aforesaid if to him it seems expedient; and further, to do and receive what our said court shall in this part consider, and have then there this writ.

In witness whereof, Roger B. Taney, Esq., Chief Justice of the Supreme Court of the United States, hath caused the seal of our said court to be hereunto affixed, this 24th day of May, 1837, and in the 61st year of our Independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

This alias scire facias is to be executed on the following persons only to wit, Ann and Maria Soward, and Elizabeth Kempt, and Mc coy Craig.

Attest: JOHN H. HANNA, *C. C. C. K. D.*

Marshal's Return.

Marshal's Return to wit: Executed on Ann and Maria Soward, at Shelbyville, 7th July, 1837. Also on Elizabeth Kempt and John McCoy, erroneously called McCoy Craig, 13th, Sept 1837.

JOHN M. McCALLA, *M. K. D.*

And afterwards, to wit, at the November term of the court aforesaid in the year 1837.

" And the said defendants come and defend the wrong and injury when, &c. for plea say the plaintiff, his action aforesaid, to have and maintain, ought not, because they say that the matters and things in said scire facias contained in manner and form as therein set forth, are not good and sufficient for the plaintiff to have and maintain his action aforesaid, and this he is ready to verify, wherefore, &c.

And the defendants come and defend, &c.

Replication.

And say that the plaintiff, his action aforesaid ought not to have and maintain because they say that there is no such record as in the scire facias—and this he prays may be enquired of by the court wherefore they pray judgment, &c.

The plaintiffs says that the matters and things in said scire facias contained in manner and form as set forth are sufficient to maintain his action, and this he is ready to verify, &c.

And the plaintiffs comes and says, that there is such record, as in the scire facias alledged, and this they are ready to verify by the record.

And thereupon the evidence upon the issue of nul tiel record, and the argument thereon, and upon the demurrer to the scire facias being heard, and court took time.

And afterwards, to wit, on a subsequent day of the term aforesaid.

The court being now sufficiently advised of and concerning the premises it seems to the court that the law, upon the demurrer is for the defendants, and it is the opinion of the court that there is no such record as the plaintiff hath in his scire facias alledged.

Judgment.

It is therefore considered by the court, that the plaintiff take nothing by his said scire facias and that the defendants go hence and recover of the lessors of the plaintiff there herein expended. Previous to the pleadings in this scire facias being entered, the following agreement was filed to wit. It is agreed by the parties in the foregoing case, that in case the law on the pleadings filed be adjudged against the defendants either by this court or the Supreme Court, that they, or either of them, be at liberty to plead any other matters that might have been pleaded on the calling of the case at this term.

On the trial of this cause the following bill of exceptions was tendered to the court signed and sealed and ordered to be recorded.

"Be it remembered, that on the trial of this cause the plaintiff in support of scire facias and replication to the plea of *nul tiel record* introduced and read to the court the record of the Judgment and proceedings in the District court of Den, on demise of Walden vs. Craig and Rose, and the order of the circuit court extending the demise in the above case in these words, to wit, (here copy them,) but the court found that the records aforesaid did not sustain the scire facias and replication, and gave judgment for defendants. To which decision of the court the *defendants* excepts and prays that these exceptions be signed, sealed, and enrolled; which is accordingly done.

JOHN CATRON. [L. S.]
THOS. B. MONROE. [L. S.]

Order of Circuit Court.

The following is the order of the circuit court referred to in the foregoing bill of exceptions, to wit:

May Term, May 8th, 1824.

JOHN DEN, on demise,
AMBROSE WALDEN, Plaintiff.
Against
LEWIS CRAIG and
JONATHAN ROSE.

In Ejectment.
Defendants.

On motion of the plaintiffs in the above cause by his attorney leave is given to amend the declaration by extending the demise to fifty years which is done accordingly. But executions not to go out before the first day of March next.

The following is the record referred to in the foregoing bill of exceptions to wit:

WALDEN'S Lessee, against CRAIG & ROSE.

Record from the District Court.

Be it remembered, that, heretofore, to wit, at a court of the United States of America held in and for the Kentucky District at the Capitol in the town of Frankfort, in the month of March, in the year of our Lord one thousand seven hundred and ninety seven, came John Den, lessee of Ambrose Walden, and exhibited a certain bill (in an action of trespass and ejectment) against Richard Fen, the casual ejector, which follows in these words, viz.

"Kentucky District, to wit: John Den complains of Richard Fen in custody, &c. For that, to wit, that wheareas, Ambrose Walden, on the fifteenth day of August, in the year of our Lord one thousand seven hundred and eighty-nine, in Mason county, in Kentucky District aforesaid, had demised and granted, and to farm, let to the said

John Den, four dwelling-houses, twenty out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of woodland, with the appurtenances, situate, lying, and being on the waters of Johnson's fork, of Licking, in Mason county aforesaid, to have and to hold, the said premises with the appurtenances, to the said John Den and his assigns, from the date of the said lease unto the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements with the appurtenances, and was thereof possessed until the said Richard Fen, afterwards, to wit, on the day and year aforesaid, in the county and District aforesaid, with force and arms, &c. entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet expired, and kept out and still keeps out the said John Den so ejected, drove out and amoved from his said possession, and then and there did other injuries to him against the peace and to the damage of the said John Den, sixty dollars, and thereupon he brings suit, &c.

Pledges to Prosecute.

JOHN DOE & RICHARD ROE.

WILLIAM CLARK,
For Plaintiff.

I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned, or to some part thereof, and I being sued in this action as casual ejector, and having no claim or title to the said premises, do advise you to appear on the first day of the next March term, in the court of the United States for the District aforesaid, by some attorney of that court, and then and there by rule of the said court, cause yourself to be made defendant in my stead, otherwise, I shall suffer judgment to be entered against me, and you will be turned out of possession.

Your loving friend,
RICHARD FEN.

28th January, 1797.

BOURBON COUNTY, *ss.*

On the twenty-second day of February, one thousand seven hundred and ninety-seven, came Thomas McGlanton before me, the subscriber, one of the justices of the peace for said county, and made oath that, on the seventeenth day of this present month, February, he did deliver a copy of the foregoing declaration, and notice on the premises, in the foregoing declaration mentioned unto Jonathan Rose, he being in possession of part of the premises in the said declaration mentioned; and that he also, on said day, did deliver another copy of the said declaration and notice to the wife of Charles Rutter,

one other tenant in possession of other part of the premises in the said declaration mentioned. And also, on the same day, did deliver a copy of the said declaration and notice to the wife of William Allen, one other tenant in possession of another part of the premises in the said declaration of ejectment mentioned; and this deponent saith, that he told them all, severally, that it was a declaration in ejectment; and unless they did appear, by some attorney of the court of the United States for said district, the next ensuing term, there would be judgment thereupon against the defendants, by default, and they would be turned out of possession.

WILL. NEALE.

And afterwards, to wit, at the term aforesaid, the following order was made herein, viz: "It appearing to the court, by satisfactory proof, that the defendants herein have been regularly served with the plaintiff's declaration, and having failed to appear and plead to the plaintiff's said action; it is therefore ordered, by the court, that the said defendants appear here on the first day of the next term of *this court*, and cause themselves to be made defendants herein, receive a declaration in a plea of trespass and ejectment, confess the lease, entry, and ouster therein, and plead thereto; or on failure thereof, (they, severally, having notice of this order,) judgment shall be entered against the casual ejector, and the writ of Habere facias possessionem awarded the plaintiff.

And afterwards, to wit, at the March term, in the year one thousand seven hundred and ninety-eight, the following order was made herein, viz:

On motion, it is ordered by the court, and by the assent of the parties, that Lewis Craig, together with the deft., Jonathan Rose, be made defendants to this suit, instead of the casual ejector, Richard Fenn, and that he will immediately appear to the plaintiff's action, and receive a declaration in ejectment, confess the lease, entry, and ouster therein supposed, and plead thereto not guilty, and agree to insist upon the title only at the trial. And it is further ordered, that if, upon the trial of the issue, a verdict should be given for the defendants, or the plaintiff should not further prosecute for any other cause than the not confessing the lease, entry, and ouster, that the lessor of the plaintiff shall pay the costs of this prosecution, if the plaintiff himself doth not pay them. Whereupon, the said defendants, by *his* attorney, confess the lease, entry, and ouster in the declaration supposed, and agrees to insist upon the title only at the trial; and the said defendants come and defend the force and injury, when and where, &c., and say they are in no wise guilty of the trespass in ejectment, in manner and form as the plaintiff hath against them complained, and of this he puts himself upon the country, and the plaintiff doth so likewise; therefore let a jury come, &c.

And it is further ordered, that Milus W. Conway do go on the land in controversy between the parties, on the day of next, if fair; if not, then on the next fair day, and then and there

lay off and survey the same, as either party may direct, having regard to all deeds and other evidence, report all matters of fact specially, and return four fair plats and certificates into the clerk's office of this court, before the day of hearing; and the sheriff of Mason county is directed to attend the said surveyor, to remove force, should any be offered. And further proceedings are continued until the next court.

And afterwards, to wit, on the day of one thousand seven hundred and (until which time this cause was continued,) the following special case was submitted to the court, by the consent of the parties herein, viz:

"The tract of land, marked on the plat by the letters A. B. C. D., was duly granted to the said Walden, lessor of the plaintiff, by patent, from the Commonwealth of Virginia, bearing date the 21st day of November, one thousand seven hundred and eighty-six.

The said Walden and Simon Kenton, executed the agreement marked A., respecting the locating of said lands; the said agreement is made a part of this case.

The defendants are in possession of that part of the tract marked on the plat by the letters E. F. G. C., and claim the said part of the said tract of land under the said agreement A., and the endorsement thereon, and a division thereof made, as certified by the report B., which report and endorsement on said agreement is also made a part of this case.

If, upon the whole, the court shall be of opinion that the legal title to the said part of the said tract of land marked on the plat, as aforesaid, by the letters E. F. G. C., is in the plaintiff, then judgment to be entered for him; if not, judgment to be entered for the defendant.

WM. CLARK,
Att'y for Pl'ff.
THOMAS TODD,
Att'y for Def't.

And now, at this day, to wit, at the June term, in the year of our Lord, one thousand eight hundred, the following judgment was given herein, viz:

The court, having fully considered and understood the said case, is of opinion, that the legal title to the said part of the said tract of land, marked on the plat E. F. G. C., is in the plaintiff, and was on the day of filing the declaration in said suit. It is therefore considered by the court, that the plaintiffs recover against the said defendants, Lewis Craig and Jonathan Rose, his term of and in the premises aforesaid, with the appurtenances yet to come and unexpired, together with his costs by him in this behalf expended; and the said defendants in mercy, &c.

And on motion of the plaintiff, by his attorney, the United States writ of Habere facias possessionem is awarded him in this suit, to cause him to have possession of the term aforesaid, returnable to the next court.

The following exhibits appear filed herein, viz:

"MASON COUNTY, *to wit:*

We, the commissioners, appointed by the worshipful, the court of Mason, aforesaid, for the purpose of dividing lands held in partnership between citizens of this Commonwealth and non residents, and being called on to divide a tract of land containing one thousand three hundred and thirty-three acres, patented in the name of Ambrose Walden, between him, the said Ambrose, and Lewis Craig, ass'ee of Craig and Johnson, and ass'ee of Simon Kenton, the locator of the said tract, two-thirds of which said tract is the property of the said Walden, and the other third the property of the said Lewis Craig, as aforesaid, proceeded this day to divide the same, in the said proportions—that is to say, one-third to the said Craig, and the remaining two-thirds to the said Ambrose Walden, as follows, to wit: Beginning at Walden's southeast corner, a mulberry, buckeye, Spanish oak, and ash, called for in the original patent; thence north, twenty-two east, with the old line one hundred and fifty-five poles, to two white ashes and sugar tree; thence north, sixty-one degrees west, three hundred and twenty-nine poles, to a walnut and two red oaks, in Johnson's line; thence south, fifty-one west, with Johnson's line, one hundred and sixty-eight poles, to three white oaks in John Walden's line; thence to the beginning: containing three hundred and twenty acres. To have and to hold the said quantity of three hundred and twenty acres, to him, the said Lewis Craig, his heirs and assigns, forever, free and clear from the let, molestation, and hindrance of him, the said Ambrose Walden, his heirs, &c. forever; and to hold to him, the said Lewis Craig, his heirs, &c. in severalty, and no longer subject to the claim of him, the said Walden. Also divided the said tract of land, as follows, to wit: Beginning at two white ashes and sugar tree, in John Walden's line and corner, to Lewis Craig; thence north, twenty-two east, three hundred and seventy-five poles, to a red oak and honey-locust; thence north, sixty-eight west, two hundred and sixty poles, to a white oak and box-elder, in Jacob Johnson's line; thence with said line, south, thirty-nine east, one hundred and twelve poles, to two buckeyes and white oak, east corner, to the said Johnson; thence south, fifty-one west, three hundred and forty poles, to a walnut and two red oaks, corner, to Lewis Craig; thence south, sixty-one east, three hundred and twenty-nine poles, to the beginning; to have and to hold the said tract of land, containing six hundred and forty acres, to him, the said Ambrose Walden, and his heirs, &c. forever, in severalty, and free and clear from the claim of him, the said Lewis Craig, as assignee, as aforesaid, and his heirs and assigns, forever.

And we, the said commissioners, do certify and declare, that the residue of the said survey, in the name of the said Ambrose Walden, is interfered with by a certain claim in the name of Jacob Johnson, and therefore not divided, but is on that account left in tenancy in common, between the said Ambrose Walden and the said Lewis

Craig, and subject to a future division, as the event of the said interference may justify.

In witness whereof, we, the said commissioners, have hereunto set our hands, and affixed our seals, this tenth day of February, one thousand seven hundred and ninety-four.

DAVID MORRIS, [SEAL.]
D. V. PAYNE. [SEAL.]

Signed, sealed, and delivered before.

"MASON COUNTY, *Set.*
April Court, one thousand seven hundred and ninety-seven:

This division of lands between Walden and Craig was returned by the commissioners, and ordered to be recorded.

Teste: THOMAS MARSHALL, Jr. M. C.

Articles of agreement made and done this first day of May, one thousand seven hundred and eighty, between Simon Kenton, of Kentucky, of the one part, and Ambrose Walden, of Carolina county, Virginia, witnesseth: That the said Simon Kenton doth bind himself to locate ten thousand acres for the said Ambrose Walden, in the district of Kentucky, in consideration of which, the said Ambrose Walden doth bind himself, his heirs and assigns, to convey a proper deed of one-third of the said ten thousand acres, so located, unto the said Simon Kenton, respect being held to quality and other local advantages; and lastly, both parties bind themselves to the performance of the premises, under the penalty of fifty thousand pounds.

his
SIMON ⋈ KENTON, [SEAL.]
mark.
AMBROSE WALDEN. [SEAL.]

Signed, sealed, and delivered, in presence of
AGNUS CAMERON,
JOSEPH CATRITE,
STEPHEN HUSTON.

I do assign over all my right, title, and interest, of the within article, to John Craig and Robert Johnson, this twenty-fourth day of April, one thousand seven hundred and eighty-seven.

SIMON KENTON, [SEAL.]

JOHN WILSON,
JAMES TURNER.

I do assign the within to Robert Johnson and Elijah Craig, trustees for John Craig.

Witness my hand, May, the eighteenth, one thousand seven hundred and ninety-one.

ROBERT JOHNSON.

TOLIVER CRAIG.

We assign to Lewis Craig, the third part of the three-thousand-acre entry, in the name of John Taylor, and one-third of one thousand five hundred acres in the name of William Nelson. John Craig's interest is only given up. December the 28th, one thousand seven hundred and ninety-three.

ROBERT JOHNSON,
Trustee to John Craig.
ELIJAH CRAIG,
Trustee to John Craig.

[For plat, see original.]

The whole of this land is now claimed and contended for by Thomas Bodley and James Hughes.
February 10th, 1794.

Surveyed, for Ambrose Walden, one thousand five hundred and fifty-five acres of land, situate in Mason county, and on the waters of Johnson's fork, of Licking, and bounded as follows, to wit: Beginning at A, a buckeye and hoop-ash stump, shewn for said Walden's most northwestwardly corner, thence S. 68°, E. 520 poles to B, two red oaks and honey-locust, thence S. 22°, W. 530 poles to C., an ash, Spanish oak, mulberry, and buckeye corner, to John Walden's survey, thence with his line N. 61°, W. 524 poles to D, a hickory, red oak, and white oak, thence N. 22°, E. 424 poles to the beginning. Also divided the above land as follows, to wit: Beginning at I, an ash, Spanish oak, mulberry, and buckeye, thence N. 22° east with John Walden's line, 155 poles to E., two white ashes and sugar-tree corner to Ambrose Walden's land, thence N. 61° W. 329 poles to F., a walnut and two red oaks in Jacob Jonson's line, thence with the same S. 57° W. 168 poles to G. three white oaks in John Walden's line, thence with the same S. 61° east, to the beginning at C., including 400 acres for Lewis Crary, as his equeal third part in quality of that part of Ambrose Walden's survey of 1,333 acres by patent, that is not included by Jacob Johnson's survey, surveyed as the commissioners of Mason county, allotted and divided. Also divided the above land as follows, to wit: Beginning at E, two white oaks and sugar-tree, corner to Lewis Craig's 400 acres, thence N. 22° E. 375 poles to B., a red oak and honey-locust, thence N. 68° W. 260 poles to I., a white oak and boxelder in said Johnson's line, thence with the same S. 39° E. 112 poles to H. two buckeyes and white oak corner to said Johnson, thence with his line S. 51° E. 340

poles to F., a walnnt and two red oaks, corner to said Craig, thence S. 61° east with his line to the beginning at E, including 535 acres for the said Ambrose Walden, as his equal two-thirds in quality, all that part of said Walden's survey of 1,333 acres by patent, that is not included in Jacob Johnson's survey. Surveyed as the commissioners of Mason allotted and divided, and the remaining six hundred and twenty acres, known in the plat by the letters A. I. H. G. D., is that part of said Walden's survey of 1,333 acres, that is claimed by a survey of Jacob Johnson, and left undivided by the said Commissioners.

WHITF'D CRAIG, *D. S. M. C.*

N. B. The within Lewis Craig's 400 acres of land was sold by said Craig to Jonathan Rose, and marked in the plat thus, J; also, sold to William Allen, and marked in the plat thus, K; also sold to Mr. Rector, and marked on the plat thus, L. The said Rose, Allen, and Rector is living on the 400 acres in plat marked Lewis Craig, and nearly as the letters points out.

Surveyed by me.

WHITF'D. CRAIG.

And afterwards, to wit, at the July term of the 7th circuit court of the United States of America, in and for the Kentucky district, at the July term of said court, in the year 1817, the following order was made, to wit:

Rule to shew cause why demise should not be extended.

AMBROSE WALDEN'S LESSEE, Plaintiff,
against
LEWIS CRAIG & JONATHAN ROSE, Defendants.
} On motion to extend demise.

This day came the plaintiff in the above suit, and moved the court for a rule on the defendants aforesaid, to shew cause, on the 6th day of the next term of this court, why the demise in the declaration should not be extended.

And afterwards, to wit, at the November term of the court aforesaid, and year 1821, until which time this motion was continued, the following entry was made, to wit:

JOHN DEN on dem. AMBROSE WALDEN, Plaintiff,
against
LEWIS CRAIG & JONATHAN ROSE, Defendants.
} In ejectment.

Upon a motion to extend the demise laid in the declaration, court being advised, do order that said motion be overruled.

"Be it remembered, that on this motion, Walden, to support his motion, produced and read to the court the declaration, proceedings,

and judgment in an action of ejectment brought in this court by the said Walden, in the name of his lessee, John Den, against said Rose, &c., in which judgment was obtained at the June term, 1800, of the district court for the district of Kentucky, having the jurisdiction of a circuit court, which declaration, proceedings, and judgment, are made part of this bill of exceptions, and also produced and read to the court, the bill, answer, decree, and other proceedings in a suit in chancery, brought in the said district court in the name of Thos. Bodley, &c. against said Ambrose Walden, and which decree was rendered at their May term, 1809. The said Walden, also, by his counsel, produced and read to this court, the bill, answer, proceedings and decree in another suit in chancery, commenced in this court in the name of said Thomas Bodley, &c., against said Walden, which suit was discontinued at the April rules, in the year 1813. He also produced and read, the Habere facias possessionem, issued on said judgment and ejectment, and the proceedings and judgment of this court, quashing the same; whereupon the said Walden, upon the whole case, and upon a rule of this court, vs. said Craig and Rose, to shew cause, &c., which was served upon said Craig & Rose, as will appear by the record of this motion, moved the court for leave to amend and extend the demise laid in the declaration and ejectment, because the same had expired during the pendency of said proceedings, as appeared by the orders, decrees, and proceedings, in the said suits in chancery; but the court being divided in opinion, refused to give leave to amend, and overruled said motion; to which opinion of the court the said Walden, by his counsel, excepts, and prays his bill of exceptions to be signed, sealed, &c.

Memo. The opinion and decision in this cause was delivered when the court was full, but the bill of exceptions not being prepared by the counsel of the plaintiff until one judge returned home for the term, the exceptions can be signed by one judge only. The several records herein referred to, being records and proceedings in this court, are ordered to be certified as a part of this bill of exceptions, without entering them on the order book.

THOMAS TODD. [SEAL.]

The following are copies of the exhibits referred to in said bill of exceptions, to wit:

Pleas before the honorable Thomas Todd and Harry Innis, Judges of the seventh circuit court of the United States of America, in and for the Kentucky district, holden at the capitol in the town of Frankfort, at the May term of said court, in the year 1809.

Be it remembered, that heretofore to wit, on the 22d day of August, 1800, came Thomas Bodley, &c. into the clerk's office of the district court of the United States, in and for the Kentucky district, and filed the following bill against Ambrose Walden, to wit:

THOMAS BODLEY, &c.
vs.
WALDEN. } Record.

"To the honorable the judge of the United States for the Kentucky district, in chancery sitting, humbly complaining, sheweth unto your honor, your orators, Thomas Bodley, Robert Pogue, Robert Campbell, and James Hughes, citizens of the State of Kentucky, that on the day of 178 , Henry Croucher and John Tibbs, made the following entry with the county surveyor, to wit: Henry Crutcher and John Tibbs, enters 10,000 acres of land on a treasury warrant, No. 18,747 as tenant in common, beginning a large black ash and small buckeye, marked thus, I. T., on the side of a Buffalo road, leading from the lower blue lick a northeast course, and about 7 miles northeast by east from the said blue licks, a corner of an entry of 20,000 acres made in the name of John Tibbs, John Clarke, John Sharpe, David Blanchard, and Alexander McLean, running thence with the said Tabbs', &c. line, due east 1600 poles, thence north 1,000 poles, to the beginning for quantity, as by an attested copy of the said entry hereto annexed, and which your orators pray may be made a part of this bill, will appear. Your orators further shew, that on the day of the said entry was surveyed according to location, and to law, and Henry Croucher assigned his proportion of the land on the plat and certificate of survey, to Robert Rutherford and Willoughly Tibbs, heir at law of the said John Tibbs, sold, after the patent had issued to him and Robert Rutherford, his interest to John Peyton, and conveyed it to him, who sold one moiety thereof to Charles Magill, and your orators purchased of the said Rutherford, Peyton, and Magill, the said 10,000 acres of land, and have obtained a deed for the same. Your orators further shew unto your honors, that a certain Ambrose Walden, a citizen of the Commonwealth of Virginia, who, your orators pray, may be made a defendant to this bill, having, on the 22d day of May, 1780, made the following entry with the county surveyor, to wit: "Ambrose Walden enters 1,333 acres upon a treasury warrant, upon the east side of Jacob Johnson's settlement, and preemption on the waters of Johnson's fork, a branch of Licking, to include two cabbins on the north side of said fork, built by Simon Butler, and to run eastwardly for quantity," on the 29th day of Nov'r., in the year 1785, caused the same to be surveyed expressly contrary to location, and so as to interfere with your orators' before mentioned claim, and having obtained a patent earlier in date than your orators, refuses to convey such part of the land as is surveyed contrary to location. Your orators further shew unto your honor, that a certain Lewis Craig purchased of Simon Kenton, who was the locator of the said 1,333 acres of land, and entitled to one-third thereof for his services, his interest therein, and sold the same to Jonathan Rose, William Allen, and Charles Rector, and the said Rose, and Allen, sold to Abraham Shockey, and Amzez Chapin, and the said purchasers have been, and now are, in possession. Your orators further shew, that the de-

fendant Walden, alleging that he had satisfied the claim of the said Kenton as locator, commenced ejectments in your honorable court against the said purchasers, or some of them, and notwithstanding a division made by the county court, obtained a judgment against them. Your orators shew that the said Chapin and Isaac Shockey, father to Abram Shockey, under whom the said Abram now holds, knowing that the title to the land which they held, of the said Ambrose Walden, is inferior to that of your orators, have at different times applied to your orators, and have made an agreement for the peaces Abraham Shockey and Amzel Chapin had purchased, as aforesaid, of Rose and Allen, who purchased; Lewis Craig and your orators suffered them to become their tenants, because they had always intended to contest the title of the said Walden to that part of his survey which is contrary to entry, of which the said Shockey, Chapin and others, are now in possession; and they have hitherto waited to see the event of the suits in your honorable court; but, although the said Walden must know that the claim of your orator to that part of the land is better than his, combining, &c., he threatens to take out execution, &c., all which actings are contrary to equity, &c. In tender consideration whereof, and for as much as your orators are remidyless at common law, to the end, therefore, that the said defendant may be compelled, upon his corporal oath, true and perfect answer to make, to all and singular the premises as fully as if the same were here again repeated and interrogated; and that by a decree of this honorable court, the said deft. may be compelled to convey to your orators as much of his said survey as is made contrary to location; and that until the matter is heard in equity, the said deft. and his agents may be enjoined and restrained from proceeding on the said judgments obtained in this court, against the said Shockey, Chapin and others, and that your orators may receive such other and further relief, as to equity and good conscience belongs. May it please your honor, the premises considered, to grant to your orators the United States writ of Spa., &c. &c.

J. HUGHES, *Atto. for Complts.*

MERCER COUNTY, *to wit:*

Personally appeared before me, a justice of the peace for the said county, Tho. Bodley, Robert Pogue and James Hughes, who, being duly sworn, made oath, that what is contained in this bill, which comes within their own knowledge, is true; and what they have received from the information of others they believe to be true. Given under my hand, this 18th day of August, 1800.

JOHN ROCHESTER.

KENTUCKY DISTRICT, *Sct.:*

An injunction is granted, agreeably to the prayer of this bill, upon condition that the complainants enter into bond with William Murray, security according to law. Given under my hand this 5th day of September, 1800.

HARRY INNES, *J. K. D.*

To the Clerk of the District Court for the United States, for the Kentucky District.

The following is a copy of the injunction bond herein, to wit:

"Know all men by these presents, that we, Thomas Bodley, Robert Pogue, Robert Campbell, James Hughes, and William Murray, of the State of Kentucky, are held and firmly bound unto Ambrose Walden, of the State of in full sum of five hundred dollars, to which payment, well and truly to be made to the said Ambrose Walden, his executors, administrators or assigns, we bind ourselves, our heirs, executors, &c., jointly, severally, and firmly by these presents, sealed with our seals, and dated this 6th day of September, 1800. The condition of the above obligation is such, that whereas the above bound Thomas Bodley, Robert Pogue, Robt. Campbell and James Hughes, have obtained an injunction to stay and enjoin all proceedings on five judgments at the suit of the said Walden's ass'ee. agst. the following persons, viz: Lewis Craig & Jonathan Rose, Lewis Craig and Amzel Chapin, Lewis Craig and William Allen, Lewis Craig and Charles Rutter, and said Craig & Abraham Shockey. Now, if the said Thomas Bodley, Robert Pogue, Robert Campbell, and James Hughes shall prosecute the said injunction with effect, or in case the same shall be dissolved, or the complts. bill dismissed, the said Thomas Bodley, Robert Pogue, Robert Campbell, James Hughes, and William Murray, will pay unto the said Ambrose Walden, all costs and damages which may be awarded in consequence of sueing out the said injunction, then the above obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed in the presence of

THOS. BODLEY,	[SEAL.]
ROBERT AMPBELL,	[SEAL.]
ROBERT POGUE,	[SEAL.]
J. HUGHES,	[SEAL.]
WILLIAM MURRAY,	[SEAL.]

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of June, and year 1802, (until which time this cause was continued,) came the defendant, Walden, and filed his answer herein, to wit:

"The answer of Ambrose Walden, a citizen of the Commonwealth of Virginia, to a bill of complaint exhibited to the honorable court of the United States for the Kentucky district, in chancery, by Thomas Bodley, Robert Pogue, Robert Campbell and James Hughes, citizens of the said State of Kentucky. This defendant saving and reserving to himself now, and at all times hereafter, all manner of advantage and benefit of exception, to the manifold errors, insufficiencies and uncertainties in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to answer unto; he answereth and saith, that on the first day of May, in the year 1780, this defendant made, at Wilson's station, near Harrodsburg, in Kentucky, where the land office

was opened; for the purpose of drawing lots in order to determine the priority of making locations; and that on the 22d of May, (as this deft. believes,) he made his entry pursuant to the lot drawn on the said first day of May, and according to law, the said entry having began at said Johnson's northeast corner of his pre-emption, as it then stood, as will appear more at large by having reference to the copy of the entry, filed in the suit at law between this defendant as plff., and Amzel Chapin and others as defendants, which entry this deft. prays may be made a part of this, his answer, and is referred to in the manner above mentioned, from a belief that it will be found in the papers in the said suit, this defendant having deposited the same with William Clark, Esq., then an attorney, employed by this defendant to institute an ejectment against the said Chapin and others, for the recovery of the said land; and this defendant further answering, expressly charges that the survey was made pursuant to his said entry, and according to law, and not as the complainants have alleged, variant from the said entry, which untrue allegation of the said complainants will be more fully evidenced by a comparison of the defendant's survey with his said entry, which entry does not appear to have been truly copied by the said complainants in their said bill; and this defendant further answering, saith that Simon Kenton, the person mentioned as the locator for this defendant, of the 1,333 acres now in dispute between the said complainant and this defendant, never had any interest whatever in the said 1,333 acres, or any part thereof, as this defendant, previous to the location thereof, had compensated the said Simon Kenton, by assigning him, the said Kenton, lands elsewhere, so that the complainants can derive no title from the said Kenton, he, the said Kenton, never having had any therein, and this defendant protesting against the claim of the said Henry Crutcher and John Tibbs, and of all others mentioned in the said bill, from whom the complts. pretend to derive a title in and to the said lands, under an entry made in the year 1783, as they state; presume that the said complainants, or those from whom they claim, have been led into an error, in consequence of the said Jacob Johnson's having removed his original survey, subsequent to the time when this defendant had made his entry and survey aforesaid, by the original survey of the said Jacob Johnson, which was made immediately before that of this defendant. This defendant further answering, saith, that he regrets that he never received any information of the complainants having obtained an injunction upon his judgments at law, until about the 4th of April in the present year, 1802, otherwise an answer would have been prepared long since. This defendant denies the combination charged in the said bill without that *that* there is any other matter or thing material or necessary for this defendant to make answer unto, and not herein well and sufficiently answered unto, confessed or avoided, traversed or denied, is true; all which matters and things this defendant is ready to aver and prove in this honorable court, shall direct and award, and humbly prays that the said injunction may be dissolved, so that this defendant may proceed to obtain the possession of his land, so long and wrongfully

fully withheld, and that this defendant may be dismissed with his costs and reasonable charges in this behalf most wrongfully sustained.

AMBROSE WALDEN.

VIRGINIA—*Corporation of Winchester, to wit:*

Ambrose Walden, the defendant above named, personally appeared before Lewis Wolfe, mayor of Winchester aforesaid, and made oath, upon the Holy Evangelists, that the facts herein stated, so far as he hath spoken of his own knowledge, are true; and so far as he hath spoken on the information of others, he believes them to be true.

Given under my hand, and *and* seal of mayoralty, this 28th [SEAL.] day of April, 1802.

LEWIS WOLFE.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of July, and year aforesaid, came the complainants, by their counsel, and say, that the allegations, and that the statements, in said answer, so far as they contradict said bill, are untrue.

And it is ruled, that the survey of ——— county do go on the land in controversy between the parties, on the —— day of ——— next, if fair; if not, then on the next fair day; and then and there lay off and survey the same, as either party may direct, having due regard to all deeds and other evidence that may be produced, report all matters of fact specially, and return one fair plat and certificate thereof into the clerk's office of this court, thirty days, at least, before the day of trial; and the Marshal, or one of his deputies, is directed to attend the said surveyor, to remove force, should any be offered.

And afterwards, to wit, at rules held as aforesaid, in the month of November, and year aforesaid, it is ruled, that either party have leave to take depositions generally.

And afterwards, to wit, at the May term of the 7th circuit court of the United States of America, in and for the Kentucky district, (until which time this cause was continued,) it is ordered that this suit be dismissed, the court not having jurisdiction thereof.

PLEAS

Before the Honorable Thomas Todd and Harry Innis, Judges of the seventh Circuit Court of the United States of America in and for the Kentucky district, at rules held in the clerk's office of the court afs'd, in the month of April, and year 1813:

BODLEY, et al. } Record.
vs.
WALDEN. }

Be it remembered, that heretofore, to wit, on the 27th day of September, in the year 1811, came Thomas Bodley, &c. into the clerk's office of this court, and filed the following bill against Ambrose Walden, to wit:

To the Honorable the Judges of the Circuit Court of the United States for the 7th circuit, Kentucky district, in chancery sitting:

Your orators, Thomas Bodley, James Hughes, and Robert Pogue, respectfully shew, that about the 5th day of September, 1800, your orators, with a certain Robert Campbell, filed their bill in chancery, against Ambrose Walden, a citizen of the State of Virginia, obtained an injunction, and executed bond, agreeably to the order ofthe judge, a copy of which bill, order, and bond, are hereto annexed, marked A, and prayed to be taken as a part of this bill.

Your orators further shew, that since the commencement of said suit, the said Robert Campbell has sold and conveyed his interest in the 10,000 acres of land in the bill mentioned, to your orators.

Your orators further shew to your honors, that at the last term of your honorable court, or at some term prior thereto, by a mistake, or from an impression that by a decision of the Supreme Court of the United States, this court had not jurisdiction of the cause, under a belief that residents, defendants, were united in the bill with the defendant, Walden, who was a citizen of Virginia, as they have been informed the said suit has been dismissed, when in fact the said Walden was the only defendant; and your orators are advised that this court has competent jurisdiction, and that their case is properly cognizable before your honors.

Your orator further charge, that if the said suit is dismissed, it was done under the impression aforesaid, and without their knowledge or consent; and that said Walden, by some means unknown to your orators, has obtained from the clerk's office of this hon'rble court, writs of habere facias possessionem, on the judgments at law, against the tenants in possession, who, at the time of commencing the suits in ejectment, held or claimed title, under Lewis Craig, but who, the said def't, Walden, well knew, had purchased of, and claimed title under, your orators, as set forth in their orignal bill, herein referred to, and who, before the said judgments were obtained, and ever since, for a lapse of near twelve years, have held peaceable possession of the premises, under the claim of your orators, as afs'd. But now, so it is, that the said Walden, combining, &c. has threatened, under the writs aforesaid, so improperly and illegally obtained, to turn out of possession the persons who purchased from, and claim under your orators, and thereby injure and oppress your orators, and those claiming under them; and inasmuch as your orators are remidiless by the strict rules of law, and can only be re-

lieved in equity: to the end, therefore, that the said defendant, Walden, may, upon his corporal oath, true and perfect, answer to the premises as fully as if the same was herein again repealed and interrogated, may it please your honors to reinstate their former injunction, or grant a new injunction, to enjoin and restrain the said defendant, and all other persons, from further proceedings on the five judgments in ejectment, and the writs of habere facias, herein mentioned, until the case is heard in equity; and to grant to your orators the Commonwealth's writ of subpœna, directed, &c. And your orators will ever pray, &c.

J. BLEDSOE, *for Complainants.*
THOMAS BODLEY,
JAMES HUGHES,
ROBERT POGUE.

FAYETTE COUNTY—*Sct.*

Thomas Bodley, for himself, and as attorney in fact for James Hughes and Robert Pogue, this day made oath, before me, a justice of the peace for said county, that what is stated in the foregoing bill is true, to the best of his knowledge and belief.

Given under my hand, this 29th day of September, 1811.

JOHN BRADFORD.

UNITED STATES OF AMERICA,
Seventh Circuit and Kentucky District, Sct.

Let an injunction issue, agreeable to the prayer of this bill, upon the complainants' entering into bond, in the penalty of $1,000, with Achilles Sneed and John H. Hanna, their security, conditioned according to law.

THOMAS TODD, *As. J. S. C. U.*

To the Clerk of the Circuit Court United States in the 7th Circuit, and District of Kentucky.

The following is the injunction bond taken herein, to wit:

"Know all men by these presents, that we, Thomas Bodley, James Hughes, Robert Pogue, and Achilles Sneed, are held and firmly bound unto Ambrose Walden, in the just and full sum of one thousand dollars; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this 27th day of September, 1811.

The condition of the foregoing obligation is such, that whereas the above bound Thomas Bodley, James Hughes, and Robert Pogue, have obtained an injunction to stay proceedings on five judgments in ejectment, and writs of habere facias possessionem for 15 acres meadow, 100 arable, and 300 acres wood-land, in the county of Ma-

son, obtained by the said Walden against Lewis Craig and Jonathan Rose, Lewis Craig and Charles Rutter, Lewis Craig and William Allen, Lewis Craig and Abraham Shockey, and Lewis Craig and Amzel Chapin. Now, if the aforesaid Thomas Bodley, James Hughes, and Robert Pogue, shall prosecute the said injunction with effect, or on failure thereof, shall well and truly pay such costs and damages as shall be awarded against them, then the above obligation to be void; else, to remain in full force and virtue.

THOMAS BODLEY, [SEAL.]
JAMES HUGHES, [SEAL.]
ROBERT POGUE. [SEAL.]

Witness, SAMUEL J. M. MAJORS, as to Sneed's signature.

ACHILLES SNEED, [SEAL.]

Signed by Samuel J. M. Major, by virtue of the power hereto annexed.

I, Thomas Bodley, for myself, and as attorney in fact for James Hughes and Robert Pogue, do hereby authorize Mr. ——— Major, to sign our names to an injunction bond to be given in the circuit court of the United States for the 7th circuit, Kentucky district, in a suit in chancery, said Thomas Bodley and others against Ambrose Walden, and to do all legal acts necessary in the premises, hereby ratifying and confirming all and whatsoever said Majors may legally do, by virtue of these presents.

Given under our hands and seals, this 27th day of September, 1811.

THOMAS BODLEY, [SEAL.]
JAMES HUGHES, [SEAL.]
By THOMAS BODLEY,
His Att'y in fact.
ROBERT POGUE, [SEAL.]
By THOMAS BODLEY,
His Att'y in fact.

Teste: J. BLEDSOE.

The following spa. in chancery was issued upon the foregoing bill, to wit:

[SEAL.] The United States of America, to the Marshal of the Kentucky District, greeting:

You are hereby commanded to summon Ambrose Walden, a citizen of the State of Virginia, to appear before the judges of our seventh circuit court of the United States in and for the district of Kentucky, at the capitol, in Frankfort, on the first Monday in November next, to answer a bill of injunction exhibited against him by

Thomas Bodley, James Hughes, and Robert Pogue, citizens of the State of Kentucky, and this he shall in no wise omit, under the penalty of four hundred dollars, and have then there this writ.

In testimony whereof, John Marshall, Esq., Chief Justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this 27th day of September, 1811, and of our independence the 36th.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's return, to wit: "executed.

RO. FERGUSON, *D. For*
ROBERT CROCKETT, *M. K. D.*"

MEMO.—This shall enjoin and restrain the within named defendant, and all other persons from further proceedings, on five judgements in ejectment, and the writs of habere facias possessionem obtained by the said defendant, against Lewis Craig and Jonathan Rose, Lewis Craig and Charles Rutter, Lewis Craig and William Allen, Lewis Craig and Abraham Shockley, and Lewis Craig and Amzel Chapin, for 15 acres meadow, 100 acres arable, and 300 acres wood-land, in the county of Mason, until the case is heard in equity, upon a bill for that purpose filed.

Attest: JNO. H. HANNA, *C. C. C. K, D.*

And afterwards, to wit, at rules held in the clerk's office, of the court aforesaid, in the year 1812, (until which time, this cause was continued on the rules,) came the defendant, Walden, and filed his answer herein, to wit: "The answer of Ambrose Walden, a citizen of the Commonwealth of Virginia, to a bill of complaint, exhibited against him, by Thomas Bodley, James Hughes and Robert Pogue, citizens of the State of Kentucky, in the honorable the circuit court of the United States, for the 7th circuit, Kentucky district. This respondent, saving and reserving to himself, now and all times, the right and benefit of excepting to the errors and insufficiences in the said bill contained for answer thereto, or to so much thereof as he is advised, it is material for him to answer, says that it is true, the complainants, and a certain Robert Campbell, filed a bill in chancery against this respondent, and obtained an injunction of the judgments in ejectment, as stated by the complainant, in their bill, to which bill this respondent filed his answer; a transcript of which answer, and the exhibits therein referred to, are hereto annexed, and made a part of this answer. It is also true, that this respondent obtained from the clerk's office, of this honorable court, writs of possession for the land which he had recovered in the said suits at law, which he supposed himself entitled to, after being kept ten or twelve years out of the use and possession of his property, by the said complainants, and although the manner in which he obtained the writs alluded to may be unknown to the complainants, it is not so. The clerk of this honorable court, and the insinuation made by the complts. in their bill, that the said writs were illegally or improperly obtained, is without

grounds or truth. This respondent knows nothing as to the other statements and allegations made by the complainants in their bill, and therefore requires them to be supported by full proof. This respondent prays this honorable court to dissolve the complainants injunction, so that this respondent may have the benefit of his judgments at law, and that the complainants bill may be dismissed, and the defendant recover of the complainant his costs in this behalf expended, &c.

FRANKLIN COUNTY—*to wit:*

This day, Ambrose Walden made oath before me, Martin D. Hardin, a justice of the peace for said county, that what is stated in the foregoing answer, in relation to his own transactions, is true, and what relates to the transactions of others, he believes to be true.

Given under my hand, this 9th day of April, 1812.

M. D. HARDIN.

And afterwards, to wit, at the May term of the court aforesaid, and year 1812.

"This day, this cause came on to be heard upon the motion of the said defendants for a dissolution of the injunction obtained herein; and the court being sufficiently advised of, and concerning the same, do adjudge and order that the said injunction be dissolved, and that the said defendant may proceed to have the benefit of his several jugdments at common law, which was enjoined herein, and also his costs by him, in this behalf expended.

And afterwards, to wit, at rules held in the clerk's office, of the court aforesaid, in the month of April, and year 1813, (until which time this cause was continued,) came the complainants and dismissed this suit.

Habere Facias.

[SEAL.] The United States of America, to the Marshal of the Kentucky district, greeting:

Whereas, John Den, lessee of Ambrose Walden, lately in our district court of the United States, for the Kentucky district, by the judgment of the said court, hath recovered against Lewis Craig, &c. Jonathan Rose, his term, yet to come of, and in four dwelling houses, twenty-out houses, 15 acres of meadow, one hundred acres of arrable, and 300 acres of woodland, with the appurtenances, situate, lying, and being on the waters of Johnson's fork, of Licking, in the county of Mason and district aforesaid, to have and to hold the said premises, with the appurtenances, to the said John Denn and his assigns, from the 15th day of August, in the year of our Lord 1789, unto the full end and term of ten years from thence next ensuing, and fully to be

complete and ended, by virtue of which said demise, the said John entered into the said tenements, with the appurtenances, and was thereof possessed, until the said Craig and Rose, afterwards, to wit, on the day and year afs'd, at the county and district afs'd, with force and arms, &c. entered into the tenements aforesaid, with the appurtenances in and upon the possession of the said John Denn, and ejected, drove out, and removed the said John Denn, from his said farm, his said term being not yet ended, and kept out, and still doth keep out, the said John so ejected, drove out and removed from his said possession; whereof, the said Craig and Rose are convict, as appears to us of record; therefore, we command you without delay, you cause the said John Denn to have possession of his farm afs'd; his term yet to come of, and in the lands and tenements aforesaid, with the appurtenances, and how you shall have executed this writ, you make appear on the first Monday in August next, before the judge of our said district court, at the capitol, in the town of Frankfort, and have then there this writ.

Witness, Harry Innis, Esq., judge of our said district court, hath caused the seal thereof to be hereunto affixed, this 2d day of June, A. D. 1812, and of our independence the 36th.

Attest: JNO. H. HANNA, *C. K. D. C.*

Marshal's return, to wit: "stayed by superceders; 62 miles travelling.

JOHN A. MITCHELL, *D. for*
ROBT. CROCKETT, *M. K. D.*"

And Afterwards, to wit, on the 8th day of June, 1812, came Craig and Rose, and filed the following petition and order for superceders, to wit:

Petition of Craig and Rose.

"To the honorable the judges of the circuit court, of the circuit court of the United States, for the 7th circuit, for the district of Kentucky, respectfully sheweth your petioners, Lewis Craig and Jonathan Rose, that at the June term, 1800, a judgment in ejectment was entered against them in the court of the United States, for the Kentucky district, in an action of ejectment brought by the lessee of Ambrose Walden, for 4 dwelling houses, &c.; on which since the last term of the court, an habere facias possessionem has been issued against them. Your petitioners are advised that the issuing of the said habere facias, is both irregular and illegal, and they are furnished by their counsel with the following assignment of errors:

1st. The judgment in ejectment was entered at the June term, 1800, and there is no record of any execution having issued until September, 1811. No execution ought to have issued after a lapse of a year, after the entry of judgment without a scire facias. Runn on ejectm. 142.

2ndly. The term had expired before the entry of judgment; of course the judgment itself is impeachable, but is sufficient for the petitioners that no habere facias can be legally issued where the term has expired. Runn on eject., 146–7, 283, 122.

Your petitioners therefore pray a supercedeas may issue. &c. &c.

J. HUGHES, *For*
CRAIG & ROSE.

UNITED STATES OF AMERICA—*Kentucky District, Sct:*

Order for Supercedeas.

Issue a supercedeas agreeably to the prayer of the foregoing petition, taking bond and security according to law. Witness my hand as judge of the said district, this 6th day of June, 1812.

HARRY INNIS.

To JOHN H. HANNA,
Clerk U. S. C. C., &c. &c.

Injunction Bond.

Know all men by these presents, that one Lewis Craig, Jonathan Rose and Thomas Bodley, all of the State of Kenty., are held and firmly bound unto Ambrose Walden, of the State of Virginia, in the sum of one thousand dollars, to the payment of which, well and truly to be made, to the said Walden, his heirs, executors, and assigns, we bind ourselves, our heirs, executors, and admrs., jointly and severally, firmly by these presents; sealed with our seals, and dated this 8th day of June, A. D. 1812.

The condition of the above obligation is such, that whereas the above bound Lewis Craig and Jonathan Rose, have this day obtained a writ of supercedeas to stay all further proceedings on a writ of habere facias, which issued from the clerk's office of the district court of the United States, in and for the Kentucky district, on the 2d day of June, A. D. 1812; wherein John Denn, lessee of the above named Ambrose Walden, is plaintiff, and the above bound Lewis Craig and Jonathan Rose are defts., for the possession of 4 dwelling, 20 out-houses, 15 acres of meadow, 100 acres of arable, and three hundred acres of woodland, with the appurtenances, on the waters of Johnson's fork, of Licking, in the county of Mason, in the district aforesaid.

Now, if the said Craig and Rose shall prosecute the said supercedeas, with effect, or in case of failure thereof, the said Craig, Rose, and Bodley shall, well and truly pay, or cause to be paid, all such damages and costs, as may be awarded against the said Craig and

Rose, in case the proceedings afs'd shall be affirmed; then the above obligation to be void, else to remain in full force and virtue.

THOS. BODLEY, [SEAL.]
By JAMES HUGHES, [SEAL.]
[SEAL.]
His Attorney in fact.

Witness, SAMUEL J. M. MAJOR.

The words "the above bound," interlined between the 19th and 20th lines before signed.

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded from all further proceedings, on a habere facias, issued from the office of the district court of the United States, in and for the Kentucky district, on a judgment in that court, wherein John, lessee of Ambrose Walden, as plaintiff, and Lewis Craig and Jonathan Rose are defts., which habere facias issued on the 2d day of June, A. D. 1812, against the said Lewis Craig and Jonathan Rose, for the possession of four dwelling-houses, 20 out-houses, 15 acres meadow, 100 acres *acres* of arable, and 300 acres of woodland, with the appurtenances, on the waters of Johnson's fork, of Licking, in the county of Mason and district, you altogether supercede, which habere facias before the judges of our seventh circuit court of the United States, in and for the Kentucky district, is brought to be corrected, on the petition of the said Lewis Craig and Jonathan Rose, who hath given bond and security to prosecute with effect; and if the proceedings aforesaid should be affirmed to satisfy and pay all such damages and costs, as shall be awarded against them. We command you to give notice to the said Ambrose Walden, that he be before the judges of our said seventh circuit court, at the capitol, in the town of Frankfort, on the first Monday in November next, to shew cause why the said habere facias should not be quashed, and have then there this writ.

Witness John Marshall, Esq., Chief Justice of the said United United States, hath caused the seal of our said court to be hereunto affixed, this 8th day of June, A. D. 1812, and in the 36th year of our Independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's return—executed 17th June, 1812 ; 62 miles travelling.

JOHN A. MITCHELL, *D. For*
ROBERT CROCKETT, *M. K. D.*

Executions Quashed.

And afterwards, towit, at the July term of the court aforesaid, in the year 1813, the following order was made herein, to wit:

"The court being now sufficiently advised of, and concerning the premises, do order that the executions issued herein be quashed; they having been issued after the expiration of the demise in the declaration, and that the said plffs. recover against the lessor of the defendant their costs, in this behalf expended.

And afterwards, to wit, at the May term, of the court aforesaid, in the year 1824, (until which time the motion to extend the demise in the declaration was continued,) the following order was made herein, to wit:

JOHN DEN, on dem. AMBROSE WALDEN, plffs.
against
LEWIS CRAIG & JONATHAN ROSE, defts. } In Eject.

Demise Extended.

On motion of the plaintiff, in this cause, by his attorney, leave is given to amend the dec'on, by extending the demise to fifty years, which is done accordinly, but execution not to go out before the first day of March next.

Petition of Jno. Proctor.

And afterwards, to wit, on the 8th day of May, 1835, came John N. Proctor, into the court aforesaid, and filed the following petition, to wit:

"To the hon'ble the judges of the United States circuit, for the seventh circuit and Kentucky dist., your petitioner, John N. Proctor, humbly represents that in the year 1797, a certain Ambrose Walden, on the demise of Den, instituted an action of ejectment in the district court, of this district, against Fen as casual, Fen as casual ejector, and during the following year, Lewis Craig and Jonathan Rose, were admitted to defend said suit, and at the June term, 1800, a judgment was rendered in favor of said Walden, for the land then in possession of Rose, the tena't in possession; but no writ of possession has ever been executed on said judgment; that the demise in said declaration was laid at ten years from the 15th day of August, 1789, and of course expired the 15th day of August, 1799, and remained dead and inoperative for about twenty-five years, by which lapse of time, your petitioner is advised the possession referred into a complete legal estate; but at the May term, 1824, of your honorable court, on the motion of said Walden, the demise afs'd was amended by inserting a new one of fifty years, instead of ten, which has been inserted in the original declaration, without the knowledge of notice to either Craig or Rose, as your petitioner is informed and believes, or any other person interested in said land, and said exparte order was not discovered until after the term was over. Your petitioner is advised that said order was surreptitiously obtained and improvidentially made, for errors in fact, even waiving the impropriety of bring-

ing into life a judgment in ejectment, perfectly dead for upwards of twenty years, and that for the following facts and reasons, viz:

After the expiration of the demise in said Walden's declaration, viz: in the latter part of the year 1800, as your petitioner is advised, Rose, the tenant in possession of the land claimed by S. Walden, from Bodley and Pogue, who claimed under a patent in the name of Tibbs, &c. for 10,000 acres of land posterior in date to that of said Walden, and adverse thereto, for which he held the bond of said Bodley and Pogue, for 130 acres, which bond was satisfied by the execution of a deed, September, 1821, and between the years 1814 and 1819, and while the said demise continued dead, your petitioner about the year 1816 or 1817, said Rose sold by executory contract, the said tract of land to his son Jonathan H. Rose, and delivered the possession thereof to him, and the said Jonathan H. Rose continued on said land, and was in fact the tier tenant at the date of the extension of the demise, viz: the 8th of May, 1824, and the said Jonathan H. had no notice or knowledge whatever of said extension, but the whole *proceed* proceedings as to him was exparte, and your petitioner states, that during the year 1826, he purchased by bond of said Jonathan H. Rose, and took possession of said land in March, 1827, and shortly afterwards received a deed therefor, from said Rose, without any knowledge upon his part of the extension of said demise, and when as he is advised, the title of said Rose had referred into a complete legal title, the said Lewis Craig was not a tiere tenant, but was entered defendant with Rose, on account of his sale to said Rose of the land in contest. Your petitioner is advised that under this state of facts, his redress is by motion to annul and reverse said order, renewing the demise, and he prays for such relief and for such other relief as his case, and as in duty bound, &c.

JOHN N. PROCTOR.

The said Proctor saith that manifest error hath intervened in the record and proceedidgs to his prejudice in this, viz:

1st. The land in question had been possessed adversely for upwards of 20 years after the first demise had expired, and previous to the order enlarging it, and no extension and renewal of the same ought to have taken place.

2d. No renewal of the demise ought to have taken place without notice to Lewis Craig and Rose; the one the landlord, and the other, the tiere tenant when the suit was brought.

3d. It was irregular to renew the demise, after it had expired, without notice to Jonathan H. Rose, the tiere tenant.

4th. The whole proceeding was irregular, collusive and void, and ought not to have been granted.

MOREHEAD & BROWN.

Mo. for rule on Def't to shew Cause, &c.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1835:

Came the plaintiff and filed his petition, and moved the court for a rule on the defendant, to shew cause why the orders extending the demise in the declaration described, and set forth in their petition, should not be set a side.

Appearance Entered.

Whereupon the defendant, by attorney, entered his appearance to said rules, and the argument of counsel being heard in part only, the same is laid over.

Vr. on Def't to shew Cause, &c.

And afterwards, to wit, on a subsequent day of the term, and year last aforesaid, the following order was made herein, viz:

The court being now sufficiently advised of, and concerning the plaintiff's motion, do consider that the defendant shew cause, on or before the sixth day of the next term, why the order made at the May term of this court, in the year 1824, extending the demise in the declarations of John Den, on dem. Ambrose Walden, against Jonathan Rose and Lewis Craig; and John Doe, on dem., said Walden against Lewis Craig and Abraham Shockey, should not be set aside or annulled.

And afterwards, to wit, at the May term of the court aforesaid, and year 1836:

The evidence having been heard, and this motion having been argued on a former day of the court, and the court being now sufficiently advised of, and concerning the premises, and the judges being divided in opinion.

Judgment.

It is considered by the court that said motions be overruled, and that defendant recover of the plaintiffs his costs, expended in these motions.

UNITED STATES OF AMERICA,
8th Circuit, Kentucky District—Sct.

I, John H. Hanna, clerk of the eighth circuit court of the United States of America, in and for the Kentucky district, do certify that the foregoing forty-three pages, contain a full, true, and complete transcript of the record and proceedings had on the scire facias therein mentioned.

In testimony whereof, I have hereunto subscribed my name, [L. S.] and affixed the seal of said court, this 12th day of January, A. D. 1838.

JNO. H. HANNA.

UNITED STATES OF AMERICA, &c.

The President of the United States, to the Judges of the Eighth Circuit Court *Court* of the United States of America, in and for the Kentucky District, greeting:

Allowed by Thos. B. Monroe, J. U. S. Dist. Ky.

That because in the record and proceedings, and also in rendering a judgment in a suit before them, between John Den, on the demise of Ambrose Walden, plaintiff, and John Bing, and Catharine Bing, his wife, John Craig, William Craig, Francis Barber, Thomas Tureman and Sarah Tureman, his wife, David Childs, John Chiles, Ann Sword, Maria Sword, Elizabeth Sword, Lewis Craig, Elizabeth Kempt, Oliver Craig, Francis Craig, McCoy Craig, Jane Craig, Melvina Craig, John H. Craig, Polly Craig, Francis Thomas, and Elizabeth Thomas, heirs of Lewis Craig, dec'd., Jonathan Rose and John N. Proctor, defendants, manifest error hath intervened to the great damage of the said John Den, on the demise of Ambrose Walden, as in his complaint hath been stated, and as it is just and proper, that the error, if any there be, should be corrected in due manner, and that full, and speedy justice should be done to the parties aforesaid, in this behalf.

You are hereby commanded, that if a judgment thereof be given, then under your seal, you distinctly and openly send the record and proceedings in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and Associate Justices of the Supreme Court of the United States, at the city of Washington, on the second Monday in January, 1838, the present seat of the National Government, that the record and proceedings aforesaid, being inspected, they may cause to be done, thereupon, what of right ought to be done.

Witness, Roger B. Taney, Esq. Chief Justice of the Supreme Court of the United States, at Washington aforesaid, this 4th day of January, 1838, and in the 62d year of our Independence.

Att: JNO. H. HANNA,
C. C. C. K. D.

To John Bing, and Catharine Bing, his wife, John Craig, William Craig, Francis Barker, Thomas Tureman, and Sarah Tureman, his wife, David Childs, John Chiles, Ann Sword, Maria Sword, Elizabeth Sword, Lewis Craig, Elizabeth Kempt, Oliver Craig, Francis Craig, McCoy Craig, Jane Craig, Melvina Craig, John H. Craig, Polly Craig, Francis Thomas, and Elizabeth Thomas, heirs of Lewis Craig, dec'd., Jonathan Rose, and John N. Proctor, greeting:

Whereas, as writ of error hath been issued by the clerk of the eighth circuit court of the United States of America, in and for the Kentucky district, and allowed by Judge Monroe, on behalf of John Den*n*, on demise of Ambrose Walden; returnable to the Supreme Court of the United States, at the city of Washington, on the second

Monday in January, 1838, to reverse a judgment entered up by the said circuit court, in a certain suit wherein said John Den, on demise of Ambrose Walden, was plaintiff, and said Craig's, h's, &c. were defendants.

These, therefore, are again to cite and command you, that you be and appear in the said Supreme Court, at the city of Washington, on the second Monday in January, 1839, then and there to hear the errors, as assigned for the reversal of the said judgment, and to be heard, if any thing you have to say, upon the said writ of error.

Witness my hand, as one of the judges of said circuit court, this 8th day of March, 1838, and in the 62d year of our Independence.

THOS. B. MONROE,
J. U. S. Dist. Ky.

Executed May 2, 1838, on Maria Soward, alias Sword.

JNO. M. McCALLA,
M. K. D.

Executed on 23 May, on Anna Soward; on 29 May, on Elizabeth Soward; on 30 May, on Elizabeth Kempt, Lewis Craig, Oliver Craig, Jane Craig, and Malvina Craig; on 31 May, on William and Jno. H. Craig; June 4, on Polly Craig; June 6, on Catharine King, alias Bing, and John Chiles, Frances Barker, and Frances McCoy, alias Craig; June 8, on; 16 June, on David Chiles. John King, and John Craig are dead. Thomas and Sarah Tureman, Francis and E. Thomas, and Jonathan Rose, are no inhabitants, and not found. Executed on Jno. N. Proctor, June 8, 1838.

ANDREW J. McCALLA,
D. M. K. D.

Service on 17 defts. - - - -	$34 00
260 miles travel - - - -	13 30
	$47 30